

**REMARKS**

Claims 15 – 17, 20, 24, 26, and 39 – 46 are currently pending with Claim 15 being the only pending independent claim. Claims 15, 16, and 24 are amended herein. Finally, Claims 1 – 14, 21 – 23, 25, and 27 – 38 are cancelled herein, and new Claims 39 – 46 are added to the case.

I. Prior Art Rejections.

In the Office Action, the Examiner issued the following final anticipation rejections under Section 102:

| <u>Reference</u>  | <u>Inventor</u>             | <u>Claims Allegedly Anticipated</u> |
|-------------------|-----------------------------|-------------------------------------|
| US 5,346,699      | Tiernan, et al. (“Tiernan”) | 15 – 17, 19 – 21, 24, 26            |
| US 6,368,529      | Lloyd et al. (“Lloyd ‘529”) | 15, 17, 19, 20, 25, 26              |
| US 6,423,251      | Blount                      | 15 – 20, 24 – 26                    |
| US 6,881,247      | Batdorf                     | 15                                  |
| US 6,896,908      | Lloyd et al. (“Lloyd ‘908”) | 15 – 17, 19, 20, 24 – 26            |
| US 7,163,974      | Manning et al. (“Manning”)  | 15, 17, 19, 20, 25, 26              |
| US 2007 / 0122442 | Lloyd et al. (“Lloyd ‘442”) | 15 – 17, 19, 20, 24 – 26            |
| JP 2001-220837    | Tobin                       | 15 – 17, 19 – 21, 24 – 26           |

In addition, the Examiner alternatively contends that Claims 15 – 20 and 24 – 26 are obvious over the Blount patent.

Finally, Claims 15 – 17, 19, 20, and 24 – 26 were provisionally rejected for obviousness-type double patenting in view of Claims 18 – 22 of copending application 10/332,549.

Each of the foregoing rejections is respectfully traversed and favorable reconsideration is requested in view of the above amendments and following remarks.

Independent Claim 15 has been amended herein to incorporate the limitations of dependent Claim 18 and now specifies that the borate solution, as applied to the non-wood building component comprises water, at least one glycol and from about 10 to about 30%, by

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weight, disodium octaborate tetrahydrate. With these limitations now incorporated into independent Claim 15, dependent Claims 18 and 25 are now cancelled.

In addition, independent Claim 15 has also been amended herein to incorporate the limitations of dependent Claim 21. Claim 15 now specifies that the non-wood building component which the borate solution is applied to is a cementitious building component, such as concrete. With these limitations now incorporated into independent Claim 15, dependent Claim 21 is also cancelled

Of the 8 cited references, it is noted that only the Blount patent has been cited against Claim 18. The Examiner has recognized the limitations of Claim 18 as distinguishing over the remaining 7 references since none of these references discloses or suggests the application of borate solution which comprises water, at least one glycol, and from about 10 to about 30%, by weight, disodium octaborate tetrahydrate. With the limitations of Claim 18 now incorporated into Claim 15, it follows then that the prior art rejections against Claim 15 (and its dependent claims) based upon these references should be withdrawn.

As for the Blount reference, it is further noted that Claim 21 was not rejected as being either anticipated by the Blount reference or obvious in view of the Blount reference. Blount does not disclose or suggest applying a borate solution to cementitious materials such as concrete. Instead, the disclosure of Blount is limited to the treatment of materials such as wood which are susceptible to fire and /or termite damage. Since the limitations of Claim 21 have now been incorporated into Claim 15 so that the claim now specifies that borate solution is applied to a cementitious building component (which is not susceptible to either fire or termite damage), it follows then that the prior art rejections against Claim 15 (and its dependent claims) based upon the Blount patent should also be withdrawn.

Finally, as to the provisional double patenting rejections based upon the '549 application, it is noted that neither Claim 18 nor Claim 21 was included in the provisional double patenting rejections. Again, the limitations of these claims are now incorporated into independent Claim 15. Thus, the provisional double patenting rejections based upon the '549 application should be withdrawn as well.

While these amendments are presented in order to expedite the allowance of the present application, Applicants do not concede that the earlier, broader scope of the claims is not patentable over the prior art of record. Accordingly, the foregoing amendments are made

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without prejudice to Applicants' right to further prosecute a broader scope of claim coverage in one or more continuation applications.

II. Cancellation of Withdrawn Claims.

In view of the finality of the current Office Action, previously withdrawn Claims 1 – 14, 22, 23, and 27 – 38 are herein cancelled in order put the entire application in a condition for allowance. This cancellation is done without prejudice to Applicants' right to further prosecute the subject matter of these claims in one or more divisional applications.

III. New Dependent Claims 39 – 46.

Finally, Applicants have presented herein new dependent Claims 39 – 46. These claims depend from independent Claim 15. Claim 39 – 42 further specify the type of glycol in the borate solution. Claim 43 and 44 further specify the average coating weight of the borate solution which is applied to the cementitious building component. Finally, Claims 45 and 46 further specify the order of the “coating” and “incorporating” steps recited in Claim 15. According to Claim 45, the cementitious building component is coated with the borate solution prior to being incorporated into the man-made structure. According to Claim 46, the cementitious building component is coated with the borate solution after being incorporated into the man-made structure.

Each of these new dependent claims distinguish over the prior art for at least the same reasons as independent Claim 15.

In light of the foregoing, the present amendment is believed to place the application in a condition for allowance and entry of the foregoing amendments and allowance of Claims 15 – 17, 20, 24, 26, and 39 – 46 is respectfully solicited.

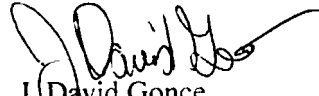
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In the event this response is not timely filed, Applicants hereby petition for the appropriate extension of time and request that the fee for the extension along with any other fees which may be due with respect to this paper be charged to our Deposit Account No. 12-2355.

Respectfully submitted,

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